

KELLY B. HALL
GEORGE I. HACKFORD
THOMAS V. REYNOLDS

IBLA 70-552

Decided February 14, 1972

Appeal from a decision by Utah land office, Bureau of Land Management, holding mining claims to be null and void ab initio.

Affirmed.

Mining Claims: Lands Subject to -- Withdrawals and Reservations: Generally

An attempt to locate a mining claim made while the land is included in an application to withdraw the land from location or entry for metalliferous minerals under United States mining laws is invalid since the notation of the filing of the application on the land office records segregates the land from lands available for disposal under the mining laws to the extent that the proposed withdrawal would.

Mining Claims: Lands Subject to -- Oil Shale: Withdrawals -- Withdrawals and Reservations: Generally

Lands which are known to be underlain by deposits of oil shale are withdrawn from operation of the United States mining laws by Executive Order 5327 of April 15, 1930, as supplemented by Public Land Order 4522 of September 13, 1968.

Withdrawals and Reservations: Generally

The regulation of the Department providing that the notation of the filing of an application for withdrawal shall segregate the land from disposal under the United States mining laws to the extent that the proposed withdrawal would is a reasonable regulation which is essential to effectuate withdrawals.

APPEARANCES: Heber Grant Ivins, for the appellants.

OPINION BY MR. HENRIQUES

This is an appeal from the decision AD-182-70 of the Utah land office, Bureau of Land Management, dated April 22, 1970, which

declared certain lode mining claims ^{1/} null and void ab initio for the reason that they had been located on oil shale lands not open to location under the United States mining laws.

The appellants contend that the land encompassing their claims is not of oil shale character; is not valuable as oil shale land; and is not land containing oil shale deposits within the purview and extent of Executive Order 5327 of April 15, 1930.

The record shows that on January 26, 1967, the Bureau of Land Management filed an application for withdrawal of oil shale lands from appropriation under the United States mining laws relating to metalliferous minerals, and that the application was noted to the records of the Utah land office on January 27, 1967. The application was approved and finalized by Public Land Order [PLO] 4522 dated September 13, 1968, 33 F.R. 14349. The PLO supplements but does not otherwise affect the withdrawal of oil shale and lands containing oil shale made by Executive Order 5327 dated April 15, 1930.

Subsequent to the time of noting of the application for withdrawal to the land office records but prior to issuance of PLO 4522 on September 13, 1968, the appellants located their several lode mining claims on lands in Uintah County, Utah, which had been classified as containing deposits of oil shale, and, since April 15, 1930, withdrawn by Executive Order 5327 from mineral location for nonmetalliferous minerals.

Regulation 43 CFR 2091.2-5 (1971) (formerly 43 CFR 2013.2-7) provides that noting of an application for withdrawal on the official plats maintained in the land office shall temporarily segregate such lands from location and other forms of disposal under the public land laws, including the mining laws, to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal.

An attempt to locate mining claims made while the land is included in an application to withdraw the land from location or entry for metalliferous minerals under the United States mining laws is invalid since the notation of the filing of the application on the land office records segregates the land from lands available for disposal under the public land laws to the extent that the proposed withdrawal would, if effected. Cf. Marion Q. Kaiser, Charles C. Kaiser, 65 I.D. 485 (1958). The regulation of the Department providing that the notation of the filing of an application for withdrawal shall segregate the land from disposal under the

^{1/} See Attachment A.

public land laws to the extent that the proposed withdrawal would be a reasonable regulation which is essential to effectuate withdrawals. Id.

All lands described in Public Land Order 4522 2/ were withdrawn from operation of the mining laws, effective from the date of posting of the application for such withdrawal to the land office records. 43 CFR 2091.2-5, supra. As this date of notation was antecedent to the dates of location of the subject mining claims, the lands were not open to such mining locations and the claims must be declared null and void ab initio. Mining claims were properly declared to be null and void ab initio where the land in the claims had at the time of location been included in an application for withdrawal which was noted on the records of the land office. Albert Gardini, John Baldrice, A-30958 (October 16, 1968).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081) the decision appealed from is affirmed.

Douglas E. Henriques, Member

We concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member.

2/ Public Land Order 4522 describes by section, township and range, some 2,147,000 acres in Utah, some 1,096,000 acres in Colorado, and some 1,875,000 acres in Wyoming. Specifically, the Order withdrew all of T. 11 S., R. 21 E., S.L.M., in which the Cyprus claims, supra, were located, and all T. 9 S., R. 20 E., S.L.M., in which the Desert Queen claims, supra, were located.

Records	Claim	location	S.L.M., Utah	Uintah County	Date of recording	Book	Situs Page	Date of
Green Lizzard	4/19/1967	T. 9 S., R. 19 E.,	4/25/1967	Z-35	491 ff.	Nos. 1-4		Sec. 5
Cyrpus		T. 11 S., R. 21 E.,						
Nos. 1, 2	10/1/1967	2 mi. west of	10/16/1967	Z-36	17, 18	Nos. 3-6	10/29/1967	
Cottonwood Wash,	11/17/1967	Z-36 30 ff	Nos. 7-18	6/2/1968	and 2 mi. east of	8/14/1968		
Z-36 124 ff		Willow Creek						

Desert Queen		T. 9 S., R. 20 E.,						
Nos. 1-3	10/29/1967	Sec. 22	11/17/1967	Z-36	27 ff	Nos. 4-LL	8/6/1968	
8/14/1968	Z-36	116 ff						

The appeal relates only to the Cyprus Nos. 1-6 and Desert Queen Nos. 1-3 lode mining claims.

The land office decision has become final as to all other claims above listed.

